

(iii) In April 1993, the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721-1 that the information return filed for the 1991 calendar year contains an incorrect TIN. The penalty will be waived, however, if R establishes the failure was due to reasonable cause as defined in this section.

(iv) To establish reasonable cause under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section, R can demonstrate that it acted in a responsible manner only if it complies with paragraph (f) of this section. R solicited E's TIN at the time the account was opened (initial solicitation). Under paragraphs (d)(2) and (f)(4) of this section, the initial solicitation relates to failures on returns filed for the year in which an account is opened (*i.e.*, 1991) and for subsequent years until the calendar year in which the filer receives a notification of an incorrect TIN pursuant to section 3406. Because E failed to provide the correct TIN upon request, the failure arose from events beyond R's control as described in paragraph (c)(6) of this section. Therefore, the penalty with respect to the failure on the 1991 calendar year information return is waived due to reasonable cause.

Example 7. (i) The facts are the same as in *Example 6*. In April 1994 the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721-1 that the information return filed for the 1992 calendar year for E contained an incorrect TIN.

(ii) To establish reasonable cause for the failure under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section R may establish that it acted in a responsible manner only by complying with paragraph (f) of this section. Pursuant to paragraph (f)(1)(ii) of this section, R must make an annual solicitation after being notified of an incorrect TIN if the payee's account contains the incorrect TIN at the time of the notification. Paragraph (f)(3) of this section provides that if the filer is notified pursuant to section 3406(a)(1)(B) the time and manner of making an annual solicitation is that required under § 31.3406(d)-5(g)(1)(ii) of this chapter. Section 31.3406(d)-5(g)(1)(ii) of this chapter requires R to notify E by mail within 15 business days after the date of the notice from the Internal Revenue Service, which R failed to do. As a result, R has failed to act in a responsible manner with respect to the failure on the 1992 information return, and the penalty will not be waived due to reasonable cause.

(1) [Reserved]

(m) *Procedure for seeking a waiver.* In seeking an administrative determination that the failure was due to reasonable cause and not willful neglect, the

filer must submit a written statement to the district director or the director of the Internal Revenue Service Center where the returns, as defined in section 6724(d), are required to be filed. The statement must—

(1) State the specific provision under which the waiver is being requested, *i.e.*, paragraph (b) or under paragraph (c) (2) through (6),

(2) Set forth all the facts alleged as the basis for reasonable cause,

(3) Contain the signature of the person required to file the return, and

(4) Contain a declaration that it is made under penalties of perjury. See § 1.6061-1 of the Income Tax Regulations for the rules on the signing of returns.

(n) *Manner of payment.* The penalty due under sections 6721 through 6723 shall be paid upon notice and demand by Internal Revenue Service, and in the same manner as a tax liability is paid.

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REGULATIONS APPLICABLE TO INFORMATION RETURNS AND PAYEE STATEMENTS THE DUE DATE FOR WHICH (WITHOUT REGARD TO EXTENSIONS) IS AFTER DECEMBER 31, 1986, AND BEFORE JANUARY 1, 1990

§ 301.6723-1A Failure to include correct information.

(a) *General rule.* If any person files an information return (as defined in section 6724(d)(1)) or furnishes a payee statement (as defined in section 6724(d)(2)) the due date for which, determined without regard to extensions, is after December 31, 1986, and before January 1, 1990, and such person fails to include all of the information required to be shown on such return or statement or includes incorrect information, such person will be considered to have failed to include correct information. For this purpose, information required to be shown on a return or statement is the information required by the applicable information reporting statute or by any administrative

pronouncement issued thereunder (such as a regulation, revenue ruling, revenue procedure, or information reporting form). Except as otherwise provided in this section, any person who fails to include correct information shall pay \$5 for each return or statement with respect to which such failure occurs; however, the total amount imposed on any person for all such failures during any calendar year shall not exceed \$20,000. See paragraph (e) of this section regarding the higher penalties for intentional disregard of the correct information reporting requirement and for interest and dividend returns and statements.

(b) *Exception for inconsequential omissions and inaccuracies*—(1) *Exception.* The penalty imposed by paragraph (a) of this section will not be assessed for any failure to include correct information on an information return if the failure does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. Similarly, the penalty imposed by paragraph (a) of this section will not be assessed for any failure to include correct information on a payee statement if the failure cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return.

(2) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example 1. A payor files a form 1099-MISC (relating to miscellaneous income) with the Internal Revenue Service and furnishes a corresponding statement to the payee. Both the form 1099-MISC and the payee statement are complete and correct, except that the word "Street" is misspelled in the payee's address. The error does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. In addition, the error cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return. Therefore, the penalty imposed by paragraph (a) of this section will not be assessed.

Example 2. Assume the same facts as in *Example 1*, except that the only error on the form 1099-MISC and the payee statement is that the payee's first name, "William," is misspelled as "Willaim." The penalty imposed by paragraph (a) of this section will not be assessed, for the reasons set forth in *Example 1*.

Example 3. Assume the same facts as in *Example 1*, except that the only error on the form 1099-MISC and the payee statement is that the payee's street address, 4821 Main Street, is incorrectly reported as 8421 Main Street. The penalty imposed by paragraph (a) of this section will not be assessed with respect to the form 1099-MISC if the error does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. However, the penalty will be assessed with respect to the payee statement because the error can reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return. See paragraph (d) of this section regarding waiver of the penalty for reasonable cause or due diligence.

(c) *Exception for corrected omissions and inaccuracies*—(1) *Exception.* The penalty imposed by paragraph (a) of this section generally will not be assessed for a failure to include correct information on an information return or payee statement if the person who filed the return or furnished the statement corrects the failure by the earliest of—

(i) The date that is 30 days after the date that the person discovers the failure; or

(ii) The date that is 30 days after the date of a written request, from the Internal Revenue Service to the person, for corrected information; or

(iii) October 1 (March 1 for payee statements) of the calendar year in which the return or statement is due.

(2) *Limitations on exception.* Notwithstanding paragraph (c)(1) of this section, timely correction of a failure to include correct information on a return or statement will not prevent assessment of the penalty for any failure that is part of a pattern of conduct, by the person who filed the return or furnished the statement, of repeatedly failing to include correct information.

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Further, correction of a failure to include correct information will not prevent assessment of the penalty for intentional disregard of the correct information reporting requirement. See paragraph (e)(1) of this section with respect to intentional disregard.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. In January 1987, Bank M prepares forms 1099-INT (relating to interest income) with respect to interest income earned by its depositors in calendar year 1986. M timely files the forms with the Internal Revenue Service and timely furnishes copies to its depositors. On March 16, 1987, M discovers that the amount of backup withholding tax (Federal income tax withheld) was inadvertently omitted from several of the forms and payee copies. Several days later M files corrected forms with the Service and furnishes corrected copies to the affected payees. The penalty for failure to include correct information will not be due with respect to the incomplete forms 1099-INT filed with the Internal Revenue Service, since they were corrected within 30 days after M discovered the omission and before October 1, 1987. However, the penalty will be due with respect to the incomplete copies furnished to the payees, since they were not corrected by March 1, 1987.

Example 2. In January 1987, Corporation N files forms 1099-DIV (relating to dividends and distributions) for calendar year 1986 and furnishes copies to its shareholders. A significant number of the forms and payee copies do not include the amount of backup withholding tax. On December 1, 1987, the Internal Revenue Service provides N with a written request for corrected information. On December 15, 1987, N files corrected forms with the Service and furnishes corrected copies to the payees. The penalty for failure to include correct information will be due with respect to the incomplete forms, since they were not corrected by October 1, 1987. In addition, the penalty will be due with respect to the incomplete copies furnished to the payees, since they were not corrected by March 1, 1987. However, N's correction of the forms is a fact to be considered, along with other facts, in determining whether the higher penalty for intentional failures will be imposed; see paragraph (e)(1)(ii)(B) of this section.

Example 3. In January 1987, Corporation O files forms 1099-DIV for calendar year 1986 and furnishes copies to its shareholders. O intentionally does not include the amount of backup withholding tax for any shareholder. Since the omissions represent an intentional disregard of the correct information reporting requirement, correction of the omissions

will not prevent assessment of the penalty for intentional failure to include correct information.

(d) *Waiver for reasonable cause or due diligence*—(1) *Reasonable cause.* Except as provided in paragraph (d)(2) of this section (relating to interest or dividend returns or statements), the penalty imposed by paragraph (a) of this section will be waived for any failure to include correct information if it is established to the satisfaction of the district director or the director of the internal revenue service center that such failure was due to reasonable cause and not to willful neglect.

(2) *Due diligence.* Paragraph (d)(1) of this section will not apply in the case of any interest or dividend return or statement (as defined in section 6724(c)(5)). However, in such a case, the penalty imposed by paragraph (a) of this section will be waived for any failure to include correct information if it is established to the satisfaction of the district director or the director of the internal revenue service center that the person otherwise liable for such penalty exercised due diligence in attempting to include such information. The requirement to exercise due diligence imposes a higher standard of conduct than required under the reasonable cause defense.

(3) *Procedure for seeking waiver.* Reasonable cause (or due diligence) may be established only by submitting a written statement that sets forth all the facts alleged as reasonable cause (or due diligence) and makes an affirmative showing of reasonable cause (or due diligence). The statement must be signed by the person required to file the information return or furnish the payee statement to which the penalty imposed by paragraph (a) of this section relates, and must contain a declaration that is made under the penalties of perjury. See §301.6061-1 for rules on the signing of returns.

(e) *Higher penalties in certain cases*—(1) *Intentional disregard of the correct information reporting requirement*—(i) *Application of section 6723(b).* If a person fails to include correct information on an information return and such failure is due to intentional disregard of the

correct information reporting requirement, the penalty imposed by paragraph (a) of this section with respect to such return will be determined under section 6723(b). The penalty prescribed by section 6723(b) for such a return is \$100 or, if greater, the amount equal to 10 percent (or, in some cases, 5 percent) of the aggregate amount of the items required to be reported correctly on the return. In the case of any penalty determined under section 6723(b), the \$20,000 limitation of paragraph (a) of this section will not apply. In addition, such penalty will not be taken into account in applying the \$20,000 limitation to penalties not determined under section 6723(b).

(ii) *Meaning of intentional disregard.* A failure to include correct information on an information return will be treated as due to intentional disregard of the correct information reporting requirement if the person who filed the return knowingly or willfully failed to include correct information at the time the return was filed. Whether a person knowingly or willfully failed to include correct information will be determined on the basis of all of the facts and circumstances in the particular case. Facts and circumstances to be considered for this purpose include, but are not limited to, the following—

(A) Whether the failure to include correct information is part of a pattern of conduct, by the person who filed the return, of repeatedly failing to include correct information on information returns;

(B) Whether the person who filed the return corrects the failure within 30 days after the date of any written request from the Internal Revenue Service for corrected information; and

(C) Whether the person who filed the return can reasonably be expected to have discovered the failure during the calendar year the return was due and, if so, whether timely correction was made.

(2) *Interest and dividend returns and statements.* In the case of any interest or dividend return or statement (as defined in section 6724(c)(5)), the \$20,000 limitation of paragraph (a) of this section will not apply. In addition, any penalty imposed by paragraph (a) of

this section with respect to such a return or statement—

(i) Will not be taken into account in applying the \$20,000 limitation of paragraph (a) of this section with respect to other returns or statements, and

(ii) Will not be taken into account in applying the \$100,000 limitations of sections 6721(a) and 6722(a) with respect to any return or statement.

(f) *Manner of payment—*(1) *In general.* Except as provided in paragraph (f)(2) of this section (relating to interest and dividend returns and statements), any penalty imposed by paragraph (a) of this section shall be paid on notice and demand by the Internal Revenue Service and in the same manner as a tax liability is paid.

(2) *Self-assessment for interest and dividend returns and statements.* Any penalty imposed by paragraph (a) of this section with respect to an interest or dividend return or statement will be assessed and collected in the same manner as an excise tax imposed by subtitle D of the Internal Revenue Code, and the deficiency procedures of subchapter B of chapter 63 of the Code will not apply. In such a case, the penalty must be self-assessed and will be due and payable on April 1 of the calendar year following the calendar year for which the return or statement is required. The penalty should be remitted with a properly executed Form 8210 (Self-Assessed Penalties Return).

(g) *Coordination with other penalties—*

(1) *Penalty for failure to supply identifying numbers.* Pursuant to section 6723(c), no penalty shall be imposed under paragraph (a) of this section with respect to any return or statement if a penalty is imposed under section 6676 (relating to the failure to supply identifying numbers) with respect to such return or statement.

(2) *Penalty for failure to file information returns or furnish payee statements.* No penalty shall be imposed under paragraph (a) of this section with respect to any return or statement if a penalty is imposed under section 6721 (relating to the failure to file certain information returns) or section 6722 (relating to the failure to furnish certain payee statements) with respect to such return or statement.

(3) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. Corporation P timely files Forms 1099-DIV (relating to dividends and distributions) for a calendar year and furnishes copies to its shareholders. Several of these forms and shareholder copies do not include correct taxpayer identification numbers (TINs), and Corporation P does not show that it exercised due diligence in attempting to include correct TINs; therefore, a penalty is imposed under section 6676(b) with respect to these several forms and shareholder copies. Since a penalty is imposed under section 6676, no penalty is imposed under paragraph (a) of this section with respect to the same several forms and shareholder copies.

Example 2. Corporation Q, a bank, fails to file certain required Forms 1099-INT (relating to interest income of its depositors) in a timely fashion. Corporation Q claims that it exercised due diligence in attempting to file the forms on time and that therefore no penalty under section 6721 or 6723 should apply. If the Internal Revenue Service finds that Corporation Q did not exercise due diligence and imposes the failure-to-file penalty under section 6721 with respect to the forms, no penalty will be imposed under paragraph (a) of this section.

Example 3. Corporation R files with the Internal Revenue Service a document purporting to be an information return. The document contains so many omissions and inaccuracies that its utility as an information return is minimized or eliminated. The Service imposes the failure-to-file penalty under section 6721 with respect to the document. Since the failure-to-file penalty is imposed, no penalty will be imposed under paragraph (a) of this section.

(h) *Effective date.* The rules contained in this section are effective January 1, 1987, as applicable to information returns and payee statements the due date for which, determined without regard to extensions, is after December 31, 1986, and before January 1, 1990. See section 7711 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239, 103 Stat. 2106 (1989)) for the applicable penalty for certain failures related to information returns and payee statements the due date for which, without regard to extensions, is after December 31, 1989.

[56 FR 15042, Apr. 15, 1991]

General Provisions Relating to Stamps

§ 301.6801-1 Authority for establishment, alteration, and distribution.

(a) *Establishment and alteration.* The Commissioner may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the law relating to internal revenue.

(b) *Preparation and distribution of forms, stamps and dies.* The Commissioner shall prepare and distribute all the instructions, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes.

§ 301.6802-1 Supply and distribution.

(a) *Postmaster General.* The Commissioner shall furnish to the Postmaster General, without prepayment, a suitable quantity of adhesive stamps (other than the stamps on playing cards), coupons, tickets, or such other devices as may be prescribed pursuant to section 6302(b) (authorizing a discretionary method for collecting certain specified taxes) or chapter 69 of the Code, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as are located in county seats or Postmaster General as necessary.

(b) *Designated depositary of the United States.* The district director for the district in which any designated depositary of the United States is located shall furnish to such designated depositary, without prepayment, a suitable quantity of adhesive stamps to be kept on sale by the designated depositary.

(c) *State agents.* Any person who is duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State may make application to the district director for the district in which the State agent is located, to be designated for the purpose of being furnished without prepayment, for sale, stamps to be used in payment of the tax imposed by section 4301. The application shall contain the location and post office address of the State